

108 FERC ¶ 61,138
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeene G. Kelly.

ISO New England, Inc.

Docket No. ER04-121-001

ORDER DENYING REHEARING

(Issued August 4, 2004)

1. On April 26, 2004, a coalition of New England municipal utilities¹ (New England Municipals) sought rehearing of a Commission order issued March 25, 2004.² For the reasons discussed below, we will deny rehearing.

Background

2. On October 31, 2003, ISO New England, Inc. (ISO-NE) filed its administrative costs for calendar year 2004, including a proposal to modify the rate design reflected in its Schedule 2 (Energy Administration Services) charge to include transactions occurring in its recently implemented day-ahead market. ISO-NE proposed to allocate its Schedule 2 costs based, in part, on its proposed application (and continued use) of a Settlement Agreement rate design previously approved by the Commission.³ In its filing, ISO-NE

¹ Massachusetts Municipal Wholesale Electric Company, Braintree Electric Light Department, Reading Municipal Light Department, Taunton Municipal Lighting Plant, Vermont Public Power Supply Authority, and Connecticut Municipal Electric Energy Cooperative.

² ISO New England, Inc., 106 FERC ¶ 61,294 (2004) (March 25 Order).

³ See New England Power Pool, 96 FERC ¶ 61,261 (2001). Under the Settlement Agreement, 15 percent of ISO-NE's Schedule 2 revenue requirement is collected based on a customer's Transaction Units (TUs) in the energy market, *i.e.*, based on the number and duration of transactions to which the customer is a party (the TU charge), while the remaining 85 percent of these Schedule 2 costs are collected based on two volumetric measures (calculated in MWh).

proposed to use this currently-effective Schedule 2 rate design as modified by the inclusion of additional billing determinants attributable to participant activity occurring in the ISO-NE day-ahead market, including transactions related to virtual trading activity.

3. ISO-NE's filing was protested by virtual traders participating in ISO-NE's day-ahead market, who asserted that ISO-NE's proposed TU charge would have the effect of shifting an onerous and disproportionate share of ISO-NE's system costs to virtual traders, whose participation in ISO-NE's markets may be deterred or even prohibited as a result. These virtual traders further asserted that they have played an important and beneficial role in ISO-NE's markets, while imposing no material costs on ISO-NE's system.

4. In an order issued by the Commission on December 30, 2003, we accepted and suspended the filing to become effective January 1, 2004, subject to refund, and subject to a technical conference to obtain additional information regarding the impact of ISO-NE's proposed cost allocation methodology on virtual trading activity in the New England energy markets.⁴ We also invited the parties to address the underlying costs and benefits attributable to these transactions and requested that the parties consider possible alternatives to the cost allocation methodology reflected in ISO-NE's filing.

5. The technical conference was convened on January 23, 2004, after which the parties submitted comments and reply comments addressing the issues in dispute. In the March 25 Order, we reviewed this record with respect to each of the issues presented. First, we noted, in the March 25 Order, that the issue in this proceeding is the equitable allocation of ISO-NE's fixed costs relating to its administration of the New England energy market and whether these costs should be allocated to virtual traders. We determined in the March 25 Order that the three-tiered rate design would be the most equitable and reasonable method of matching benefits and cost responsibility because some level of cost contribution should be required from virtual traders since virtual traders benefit from the existence of ISO-NE's market infrastructure. Accordingly, we accepted a cost allocation option sponsored by ISO-NE in its comments to implement, on a prospective basis, a three-tiered rate design methodology which would distinguish between virtual trading and physical trading. Specifically, under ISO-NE's proposed cost allocation option, virtual traders would be required to pay a TU charge for each submitted Increment Offer (Inc) and Decrement Bid (Dec) (\$0.005) and would then be required to pay a second charge for each "Inc" and "Dec" that actually clears (\$0.06).⁵ Physical traders, on the other hand, would be assessed a single charge of \$0.688.

⁴ ISO New England, Inc., 105 FERC ¶ 61,397 (2003) (December 30 Order).

⁵ A Dec is a bid to purchase energy at a specified location in the day-ahead energy market (or virtual market), i.e., it is not associated with physical load. An Inc is an offer to sell energy at a specified location in the day-ahead energy market.

6. In approving this three-tiered rate design, we noted that the parties had generally agreed that it would be reasonable to allocate at least some of the fixed costs reflected in the TU charge to virtual traders. We also noted that while the accommodation reflected in this allocation will necessarily raise the TU charge payable by all other market participants to whom this charge will be assessed (from \$0.584 to \$0.688), we believed that this allocation was reasonable, here, given the benefits that virtual trading can bring to the marketplace as a whole.

Request for Rehearing

7. On rehearing, the New England Municipals assert that the Commission erred in its determinations regarding the benefits attributable to virtual trading, characterizing these benefits as merely theoretical in nature. The New England Municipals further assert that the rate discount approved by the Commission for virtual traders was not based on substantial evidence, is discriminatory in relation to other rate payers, and could not be imposed absent a finding made under section 206 of the Federal Power Act (FPA)⁶ that ISO-NE's existing rates were unjust, unreasonable, or unduly discriminatory or preferential.

Discussion

8. We will deny rehearing. First, we reject the New England Municipals' assertion that the Commission's approval of a three-tiered rate design applicable to ISO-NE's annual TU charge required a Commission finding made under section 206 of the FPA. In fact, ISO-NE's annual charge to recover its calendar year 2004 administrative costs was submitted for our review and approval by ISO-NE under section 205 of the FPA⁷ and included a proposed rate applicable for the first time to ISO-NE's day-ahead market. As such, our ruling on ISO-NE's filing did not require us to determine that an existing rate was unjust or unreasonable, or unduly discriminatory or preferential.⁸

9. Nor did the Commission err in its determination that a TU charge with a three-tiered rate design is just and reasonable under section 205. We have recognized that virtual traders should make a fair contribution to fixed cost recovery. The three-tiered rate design was a rate design option sponsored by ISO-NE in its comments, supported, at least in part (regarding the cleared-bid component), by ISO-NE's virtual traders, and structured, in part, on a settlement agreement broadly supported within the New England

⁶ 16 U.S.C. § 824e (2000).

⁷ Id. at § 824d.

⁸ Indeed, there was no pre-existing rate on file to cover the day-ahead market, since this filing was made to establish that rate.

Power Pool. This allocation of fixed costs reflects the benefits virtual traders bring to the market, while continuing to assure that they bear a fair share of those costs. It is further justified by the distinction between virtual trading activities and physical trading – a distinction that the New England Municipals do not contest.

10. Our ruling was also based on the potentially prohibitive cost burden that could be imposed on virtual traders if the rate design methodology, as proposed initially by ISO-NE, relied solely on the number of bids made as a rate trigger -- a finding supported by the bid data submitted for the record by ISO-NE. We noted, moreover, that if ISO-NE's virtual traders were forced from the market as a result, the rates payable by those who remained (including the New England Municipals) would necessarily rise in excess of the rates we were approving, while the system-wide benefits that may be attributable to virtual bidding would also be lost.

11. Finally, we noted that while the precise benefits associated with virtual trading may be difficult to fully quantify at this time (ISO-NE's day-ahead market was not implemented until March 1, 2003 and the TU charge in the day ahead market was not implemented until January 1, 2004), the benefits that virtual trading can bring to the marketplace warrant the measured rate treatment approved in the March 25 Order.

12. In this regard, the March 25 Order made a carefully balanced determination. We found, for example, that virtual traders should be expected to contribute to the payment of ISO-NE's system costs, should not be granted retroactive relief (back to January 1, 2004), and would be required to contribute their fair share both with respect to cleared bids and (to discourage frivolous bidding) with respect to their submitted bids. Moreover, we noted that ISO-NE's rate design would apply only to a nine-month period in which the rates at issue will remain in effect, subject to our further review of this rate design in ISO-NE's calendar year 2005 filing. Specifically, we required ISO-NE to file a report in its 2005 filing detailing the effect of virtual transactions on the energy markets it administers. For all these reasons, we find that the March 25 Order correctly approved a three-tiered rate design applicable to ISO-NE's TU charge for calendar year 2004.

The Commission orders:

The New England Municipals' request for rehearing is hereby denied.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.